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March 20, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 26, 2007

Case Number: TSO-0556

This decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy (DOE) security office (LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored.¹ For the reasons stated below, I find that the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an individual diagnosed with alcohol abuse. The Individual is also alleged to be "a user of alcohol habitually to excess." The events leading to this proceeding began in September 2006, when the Individual, on his own initiative, chose to obtain counseling from his employer's Employee Assistance Program (EAP) because of his concern that his alcohol use was negatively affecting his relationships with his spouse and children. DOE Exhibit 3 at 7; DOE Exhibit 5 at 8. Specifically, the Individual reported consuming alcohol at least three times a week. DOE Exhibit 5 at 62. The Individual also indicated that, when he was drinking, he would often withdraw from his family, become moody and be overly strict with his son. DOE Exhibit 5 at 14-19; Transcript of Hearing (Tr.) at 11, 23. Both the Individual's current and former spouses expressed concerns that his alcohol use was excessive.² DOE Exhibit 5 at 67. The EAP

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² In June 1985, the Individual was arrested for driving while intoxicated.

counselor treating the Individual recommended that the Individual abstain from using alcohol, enroll himself in an outpatient alcohol treatment program and continue to obtain counseling services. The Individual completed the three-month outpatient treatment program in March 2007 and continued to receive counseling from the EAP. DOE Exhibit 3 at 4; DOE Exhibit 5 at 32. Because the Individual was receiving treatment for alcohol concerns, a personnel security interview (PSI) of the Individual was conducted on March 27, 2007.³ The Individual was then asked to submit to an examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On May 16, 2007, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. DOE Psychiatrist's Report at 1. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On May 17, 2007, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR). DOE Exhibit 3 at 7. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed from his alcohol abuse. DOE Exhibit 3 at 8. In his Report of Examination, the DOE Psychiatrist opined that the Individual

needs to be abstinent from alcohol through the remainder of the current calendar year[,] at least until January 2008[,] in order to demonstrate adequate evidence of rehabilitation or reformation. I would suggest that he continue to see . . . the EAP counselor and also that his counselor channel him into whatever alcohol treatment program would be appropriate, as well as whatever monitoring program would be indicated through the EAP program, not to end prior to January 2008.

DOE Exhibit 3 at 8. After receiving the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J).

On October 26, 2007, the Individual filed a request for a hearing with the LSO. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held. At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented two witnesses: his spouse and a psychiatrist (the Consulting Psychiatrist). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the

³ The transcript of the March 27, 2007, PSI appears in the record as DOE Exhibit 5. The transcript of a previous PSI, conducted on November 22, 2000, appears in the record as DOE Exhibit 6.

agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF FACT AND ANALYSIS

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines) Guideline G* at 10. In the present case, the Individual does not dispute the DOE Psychiatrist's diagnosis of alcohol abuse. Accordingly, the question before me is whether the Individual is sufficiently reformed or rehabilitated to resolve the security concerns raised by his alcohol abuse diagnosis.

The *Revised Guidelines* set forth four conditions that could mitigate security concerns arising from alcohol abuse. Among those conditions are the following:

- (b) the individual acknowledges his . . . alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (d) the individual has successfully completed . . . counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous [(AA)] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Revised Guidelines at 11. The fact that, in the present case, the Individual has met three of these four conditions strongly supports a conclusion that the Individual has sufficiently mitigated the security concerns raised by his alcohol abuse.

The Individual testified that he ceased his use of alcohol and intends to refrain from alcohol use in the future. Tr. at 27, 32, 48, 53, 62. The Individual frankly testified that his use of alcohol had been problematic. *Id.* at 21, 23. The Individual testified that in order to address his alcohol abuse he attended a three-month outpatient treatment program, has been undergoing one-on-one counseling, attends an aftercare program and has begun attending AA meetings. *Id.* at 20-23, 25, 28-29, 42, 44. However, the Individual did acknowledge that he used alcohol on May 8, 2007 (just 8 days before being examined by the DOE Psychiatrist), on July 1, 2007, and in December 2007 (a few weeks prior to the hearing). Tr. at 50, 54, 60; DOE Exhibit 3 at 8. The Individual testified that he originally sought counseling with the EAP because he felt that he and his spouse were experiencing communication problems. *Id.* at 23, 47. As a result, he realized that alcohol was contributing to these communication problems. *Id.* at 23. The Individual testified that undergoing counseling and abstaining from alcohol use had improved his relationships with his spouse and children, made him more even-tempered and improved his outlook towards life. *Id.* at 20-23, 27-28, 30. The Individual now recognizes that his life is better without alcohol. *Id.* at 27-28, 35, 39, 50, 53. His spouse's testimony essentially corroborated the Individual's testimony.

The Consulting Psychiatrist testified on the Individual's behalf. He examined the Individual on two occasions for evaluation as opposed to treatment. *Id.* at 65. The Consulting Psychiatrist testified that it was clear that the Individual was a full participant in the therapeutic process and that his prognosis was positive. *Id.* at 65-66. The Consulting Psychiatrist testified that he was in agreement with the conclusions in the DOE Psychiatrist's Report. *Id.* at 69, 81. The Consulting Psychiatrist noted that the Individual had used alcohol on two occasions during the previous year. *Id.* at 70-71. He testified that it was "extremely important" to note that on both these occasions, the Individual recognized that he was making a mistake and "policed" himself by ceasing consumption of alcohol.⁴ *Id.* at 70-71, 74, 85. Noting that the Individual now has "the tools," "the willpower," "the knowledge that he should not drink," the self-awareness, a supportive spouse⁵ and a stable employment situation, each of which should help him to stay sober, the Consulting Psychiatrist testified that the Individual is reformed and rehabilitated from his alcohol abuse. *Id.* at 82-83.

After observing the testimony of the Individual, the Individual's spouse and the Consulting Psychiatrist, the DOE Psychiatrist testified. The DOE Psychiatrist testified that he was impressed with the Individual's honesty and forthrightness and "his earnest

⁴ While the Consulting Psychiatrist testified that the Individual used alcohol twice in the preceding year, the record indicates that the Individual used alcohol on three occasions.

⁵ It is clear that the Individual's spouse has played an important part in his recovery. The record shows that it was the Individual's spouse who initially convinced the Individual to seek professional assistance for his alcohol issues. DOE Exhibit 5 at 8. The Individual's spouse has accompanied the Individual to counseling sessions and AA meetings as well. DOE Exhibit 5 at 9; Tr. at 29.

effort to address what had been a significant history of difficulties with alcohol.” *Id.* at 86-87, 91. The DOE Psychiatrist noted that it was the Individual who initiated the treatment process. *Id.* at 88. The DOE Psychiatrist testified that the two episodes of light alcohol use that occurred after he examined the Individual were “[N]ot so significant that I felt . . . we had to start the calendar [over again].” *Id.* at 88-89, 92-94, 96. The DOE Psychiatrist testified that, in spite of the fact that the Individual used alcohol on those occasions, he felt that the Individual was now reformed. *Id.* at 94, 96. The DOE Psychiatrist specifically testified: “If I interviewed him today, went through the same process that I was asked to do in May, and I heard all [the] things from him that I’ve heard, I would have said that he’s adequately reformed.” *Id.* at 98-99.

At the hearing, I asked the DOE Psychiatrist: “Normally, . . . other psychiatrists, who have testified in front of me have always said that we need to have a period of time . . . of complete abstinence to conclude that someone is rehabilitated. [Could you] explain to me why you are deviating from the standard, or why I should. . . .?” The DOE Psychiatrist stated

I’m deviating from the normal requirement, [because] he has policed himself. There hasn’t been a slip where he’s really been in trouble. Now if he had gotten drunk in December, well then, we don’t have a lot to talk about, the man is clearly in - - got some continuing problems that he hasn’t mastered. I don’t like the fact that he had a couple of beers. It suggests that he is being a little more cavalier or casual about his rehabilitation and/or reformation, but I think he’s gotten the point. I think AA has taught him that, and I think that perhaps it was a lesson, don’t go testing the water. So I am being a little lenient . . . there isn’t anything in his history to suggest that he is going to get in serious trouble with alcohol again. . . . In terms of what we know, a stable marriage, a stable job, these are the things you look for to prognosticate that people won’t have problems with alcohol. . . . In the context of his current stable life, I think we could expect that he’s going to do quite well.

Tr. at 101-02.

In the administrative review process, it is the Hearing Officer who has the ultimate responsibility to determine whether an individual with alcohol problems has exhibited rehabilitation or reformation. *See* 10 C.F.R. § 710.27. Whether a particular individual is rehabilitated or reformed from alcohol abuse is a case-by-case determination based on the available evidence and the particular facts of each case. In making this determination, Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals concerning the probability that an individual will relapse. *See, e.g., Personnel Security Hearing (Case No. TSO-0477)*, 29 DOE ¶ 83,060 (2007) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation).

As noted above, there is ample evidence - - cited herein, below or otherwise described in this decision - - revealing that the Individual has successfully met three of the four conditions in the *Revised Guidelines* in the record to support a conclusion that he has resolved the security concerns raised by his alcohol abuse. The Individual clearly has taken action to overcome his alcohol problem by self-initiating treatment and counseling, and by attending AA meetings. The Individual has, as evidenced by the testimony of both expert witnesses, established a pattern of self-policing, of responsible use, and has received a favorable prognosis from both expert witnesses. Moreover, both experts agree that the Individual is reformed and rehabilitated from his alcohol abuse.⁶ Accordingly, I am convinced that the Individual has resolved the security concerns raised by the DOE under Criterion J.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: March 20, 2008

⁶ Since the Individual's habitual use of alcohol to excess was, in essence, a symptom of his alcohol abuse, rehabilitation and reformation of his alcohol abuse also resolves any security concerns caused by his excessive, habitual use of alcohol.